

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARK A. DEMBY,

Defendant Below,  
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below,  
Appellee.

§

§ No. 135, 2018

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§ Court Below—Superior Court  
§ of the State of Delaware

§

§ Cr. ID No. 170301012786 (N)

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Submitted: August 2, 2018

Decided: August 17, 2018

Before **STRINE**, Chief Justice; **VALIHURA** and **TRAYNOR**, Justices.

**ORDER**

The appellant's Supreme Court Rule 26(c) brief, the State's response, and the record below reflect that:

(1) On November 17, 2017, a Superior Court jury found the appellant, Mark A. Demby, guilty of Assault in the Second Degree and five counts of Endangering the Welfare of a Child. After granting the State's motion to declare Demby a habitual offender, the Superior Court sentenced Demby as follows: (i) for Assault in the Second Degree, as a habitual offender, eight years of Level V incarceration; and (ii) for each count of Endangering the Welfare of a Child, one year of Level V incarceration, suspended for one year of Level III probation. This is Demby's direct appeal.

(2) On appeal, Demby's counsel ("Counsel") filed a brief and a motion to withdraw under Supreme Court Rule 26(c). Counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. Counsel informed Demby of the provisions of Rule 26(c) and provided Demby with a copy of the motion to withdraw and the accompanying brief.

(3) Counsel also informed Demby of his right to identify any points he wished this Court to consider on appeal. Demby has not provided any points for this Court to consider. The State has responded to the Rule 26(c) brief and has moved to affirm the Superior Court's judgment.

(4) When reviewing a motion to withdraw and an accompanying brief under Rule 26(c), this Court must: (i) be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims; and (ii) conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.<sup>1</sup>

(5) This Court has reviewed the record carefully and has concluded that Demby's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Counsel has made a conscientious effort to examine

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<sup>1</sup> *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *Leacock v. State*, 690 A.2d 926, 927-28 (Del. 1996).

the record and the law and has properly determined that Demby could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Leo E. Strine, Jr. \_\_\_\_\_

Chief Justice